

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE PORK ANTITRUST
LITIGATION

Civil No. 18-1776 (JRT/HB)

**STIPULATED CONFIDENTIALITY
AGREEMENT REGARDING NON-
PARTY TRADER JOE'S
COMPANY'S MATERIALS**

This Document Relates to:

All Actions

This confidentiality agreement (“Agreement”) is made and executed as of the 4th day of February, 2022 by and between Trader Joe’s Company (together with its parents, subsidiaries, affiliates, corporate predecessors and assigns, agents, and attorneys, “Trader Joe’s”) and the undersigned parties (“Parties”) to *In re Pork Antitrust Litigation* (No. 18-cv-01776-JRT-HB) (the “Action”), which is currently pending in the United States District Court for the District of Minnesota.

The Court adopted the Parties’ agreed upon Protective Order on November 26, 2018 (Dkt. 212), which contains at Paragraph 6(c) a provision indicating that Outside Counsel may, under certain circumstances, provide their clients with high level summaries or characterizations of evidence in the case. (Dkt. 212 at 11-12).¹ Trader Joe’s objected to the breadth of this provision with respect to any evidence it produces under a Highly Confidential designation in connection with the subpoenas issued by the Parties because of the potential that Trader Joe’s extremely sensitive business information may be revealed to parties in this case that could gain a competitive advantage as a result. The Court amended Paragraph 6(c) of the Protective Order on January 31, 2022 to require that high level summaries of a non-party’s Highly Confidential information must be anonymized. (Dkt. 1155 at 12). Trader Joe’s maintains its concern that Trader Joe’s extremely sensitive business information may be revealed to parties in this case that could gain a competitive advantage as a result.

¹ All capitalized terms herein shall have the meaning given in the Protective Order.

Therefore, the Parties enter into this Agreement to govern treatment of evidence produced in this litigation by Trader Joe's that Trader Joe's designates as Highly Confidential. Specifically, the Parties agree as follows:

A. The Amended Protective Order (Dkt. 1155) shall govern the treatment of Confidential or Highly Confidential Material produced by Trader Joe's, except that the Parties agree to interpret Paragraph 6(c) with respect to evidence produced by Trader Joe's that Trader Joe's has designated as Highly Confidential as outlined in Section B below.

B. Notwithstanding paragraph 6(b) of the Protective Order, experts retained by the parties to the Action may review and analyze the evidence produced by Trader Joe's, draw conclusions therefrom, and generate expert witness reports summarizing those conclusions at a high level to be shared with the Parties and the Court. The Parties are permitted to review such materials prepared by their Experts, except to the extent any portion of the materials both 1) identify Trader Joe's, whether implicitly or explicitly; and 2) describe, summarize, characterize, or otherwise reveal the contents of evidence produced by Trader Joe's, in which case the materials must be redacted so as to conceal the identity of Trader Joe's. Redactions will be considered compliant if, and only if, *all* retailer identities are redacted or anonymized where any such evidence involving Trader Joe's will be disclosed. To illustrate, an expert report addressing retailers' wholesale costs for bacon may permissibly state: "one supermarket spent \$1.00/lb for bacon, another spent \$1.10/lb, and a third spent \$1.20/lb"; "supermarkets whose data was surveyed spent, on average, \$1.10/lb for bacon"; or "[REDACTED] spent \$1.00/lb for

bacon, [REDACTED] spent \$1.10/lb, and [REDACTED] spent \$1.20/lb,” with the unredacted version available only to those persons identified in Section 6(b) of the Protective Order as “allowed to review Highly Confidential Information.” However, an expert report would *not* be compliant if it stated, for example: “[REDACTED] spent \$1.00/lb for bacon, Kroger spent \$1.10/lb, and Whole Foods spent \$1.20/lb” or “Trader Joe’s spent \$1.00/lb for bacon, Kroger spent \$1.10/lb, and Whole Foods spent \$1.20/lb.” In addition, high level summaries may not describe individual retailers in a manner that could make them identifiable to someone with knowledge of the industry, for example, by stating the numbers of store locations affiliated with a given entity, the state or city of its headquarters, or other descriptors that are not shared among like retailers. For avoidance of doubt, it is the intention of the Parties that no Party’s experts or counsel may share with the Party any information referring to, summarizing, describing, detailing, excerpting, containing, or otherwise based on materials produced and designated “Highly Confidential” by Trader Joe’s in this litigation where the Party could identify Trader Joe’s as the source of the substance of that information.

IN WITNESS WHEREOF, Trader Joe’s and the Parties, through their undersigned counsel, intending to be legally bound hereby, have executed this Agreement as of the date stated above:

DATED: February 4, 2022

Respectfully submitted,

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